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10/806,252	03/22/2004	Mark R. Kirkland	1795.KIRK.PT	1923
26986 7590 01/24/2008 MORRISS OBRYANT COMPAGNI, P.C. 734 EAST 200 SOUTH SALT LAKE CITY, UT 84102			EXAMINER THAKUR, VIREN A	
			ART UNIT 1794	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/806,252

**Applicant(s)**

KIRKLAND, MARK R.

**Examiner**

Viren Thakur

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,8-13 and 16-27 is/are pending in the application.
- 4a) Of the above claim(s) 18-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-13,16,17 and 23-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 11, 2007 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. **Claims 1-6,8-9, 10-13,16-17 and 23-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.**

Claims 1 and 10 recites the limitation "cylindrically containerized beverage pathways." Applicant has not provided support in the specification wherein the pathways of a vending machine structured to vend containerized beverages are cylindrical. On page 7, paragraph 0019, applicant states that the shape of the container is cylindrical and suitable for dispensing from a vending machine that is structured to vend twelve ounce aluminum beverage cans." However, this does not mean that all vending machines structured to vend twelve ounce aluminum beverage cans comprise cylindrical pathways.

Claim 23 recites the limitation "readily." Throughout applicant's specification support is only found for the opening mechanism providing access to the contents therein, such as on page 7, paragraph 0018 and page 14, paragraph 0035. Applicant does not have support for the ease with which one would have access to the inside of the container.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**5. Claims 1-9, 23-26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Instant claim 1 recites the limitation "cylindrically containerized beverage pathways." It is unclear as to whether the pathways are cylindrical or whether the container is cylindrical.

Claim 23 recites the limitation "readily." This term is relative and renders the claim indefinite. The term "readily" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree. Therefore it is unclear as to what is considered a mechanism for readily accessing the interior of the product enclosing portion.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**7. Claims 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Howes et al. (US 5056659).**

The rejection is taken as cited in paragraph 13 of the previous Office Action, mailed November 15, 2006.

**8. Claims 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Bezek et al. (US 6472007).**

Bezek et al. disclose a vendable container (Abstract) comprising a sealed product enclosing portion (Figure 1, See Inside container), an opening mechanism for

readily accessing the interior of said product enclosing portion (Figure 1, Item 26) and at least two disparate products

**9. Claim 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Rea et al. (US 5950913).**

Rea et al. disclose at least two disparate products which are food products (Figure 1, Items P and C) in a sealed product enclosing portion (Figure 1, Item 11) with an opening means for accessing the interior of the container (Figure 1, Item 10). It is noted that the container of Rea et al. would have been capable of being dispensed from the containerized beverage pathways of vending machines. Regarding instant claim 24, Rea et al. disclose at least one product is a comestible product, such as item P.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**12. Claims 1, 10 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warner (US 2384863) in view of Savage et al. (US 20030071036) and Krikland (US 6006945).**

Regarding instant claims 1, 10 and 23, Warner teaches a vending machine suited to vend both beverages and sandwich-like products, such as hot-dogs (Page 1, Right Hand Column, Line 54 to Page 2, Left Column, Lines 9-22). Regarding the container, Warner teaches wrapping sandwiches with a napkin and then placing inside a cardboard cylinder (Page 2, Right Hand Column, lines 4-12).

Warner is silent in explicitly teaching wherein the package is completely enclosed with a top bottom to form a sealed container.

Nevertheless, Warner further teaches that the food may be held by friction within the cardboard container, or the cardboard container can also include removable ends (Page 2, Right Hand Column, Lines 15-19).

Savage et al. is relied on to teach the conventionality of sealing a vendable sandwich-like product (Paragraph 0060 and 0069). Therefore to close the ends of the receptacle holding the sandwich like product of Warner would have been obvious to the ordinarily skilled artisan for the purpose of protecting the food product from contaminants.

The claims further differ from Warner and Savage et al. in reciting an opening mechanism for breaching the sealed enclosure.

Kirkland similarly teaches using a pullback tab (Figure 1) and further teaches other opening mechanisms as shown in Figure 4 and a pulling strip (Column 4, lines 42-48) which can be used with plastic or cardboard containers (Column 5, lines 9-11). The prior art thus teaches the conventionality of opening mechanisms to access the contents of the product contained therein. Therefore to use a particular opening mechanism, such as a tearing strip (Figure 4, item 34 of Kirkland) would have been an obvious for the purpose of facilitating opening of the sandwich of modified Warner.

Further regarding instant claims 10 and 23, the sandwich-like product, such as the hot dog or sausage sandwich of Warner, comprises two disparate food products, the bread and the filler.

Regarding instant claims 2-4, the sandwich of Warner comprises a bread like portion and a filler, which are in contact and would have a shelf life of between 0 and three years.

**13. Claims 1-4, 6, 8-11, 13, 16, 17, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nedblake Jr. (US 5664671) in view of Bezek et al. (US 6472007) and Yu (US 5279841).**

Regarding instant claims 1, 10 and 23, Nedblake teaches a container (Figure 1), sized and shaped for being dispensable from the pathways of a vending machine structured to vend cylindrically containerized beverages (Column 2, lines 47-57), said



container having a non-beverage food product enclosing portion (Figure 2, Item 14), a top (Figure 2, Item 34) and a bottom (Figure 2, Item 32) conjointly formed with said non-beverage food-product enclosing portion to provide a unitarily sealed enclosure.

Regarding the opening mechanism as recited in instant claims 1, 10 and 23, Nedblake recites at minimum, two elements that form a chamber which would have to be separated.

Claims 1, 10 and 23 differ from Nedblake in reciting wherein said container comprising a food product enclosing portion further comprises an opening mechanism for breaching the sealed enclosure to provide access to the interior of said non-beverage food product enclosing portion.

Bezek et al. is relied on to teach an opening mechanism for a compartment of a vendable container (Column 3, lines 47-54) wherein the vendable container has an opening mechanism on each compartment for breaching the sealed enclosure, which contains disparate foods, to provide access to the interior of the container (Figure 9b, Item 920).

Yu is cited as further evidence of the conventionality another type of opening mechanism (Figure 3 and 3b) for vendable compartmentalized containers. Yu teaches that the size of the combination package can be equal to the size of the current aluminum can filled with a soft drink (Column 3, lines 36-40), thus making it vendable. Yu further teaches a variety of combinations of food products, as shown in figures 6 through 6c, and further teaches opening mechanisms for breaching the sealed enclosure for providing access to the interior of the enclosure (Figure 3 and 3b).

The containers of Bezek et al., Yu and Nedblake Jr. are analogous in that they teach a combination of food products with a unitary container that are capable of being dispensed through a vending machine. Nedblake Jr. already teaches a sealed container comprising a food product. To open the container for accessing the food product therein would have been obvious to one having ordinary skill in the art. Therefore, based on Yu and Bezek who teach conventional opening means for accessing the contents of a compartment of a vendable container comprising disparate food products, it would have been obvious to one having ordinary skill in the art to modify Nedblake Jr. and substitute one conventional opening means, such as those taught by Bezek and Yu for breaching the sealed enclosure and accessing the food product contained therein.

Further regarding instant claims 10 and 23, Nedblake teaches two disparate products such as the sandwich bun and the filler material contained within the product enclosing portion of said container.

Regarding instant claims 6, 9, 10 which recite wherein the first and second products are disparate non-beverage food products, and instant claims 8 and 16 which recite a list of food products as the at least one disparate food products, it is noted that the prior art of Nedblake, Bezek et al. and Yu teach providing a combination of food products. Once it was known to provide food components in different chambers and associate the chambers together, wherein said food components would be consumed together or during the same sitting, the particular conventional products one chooses to associate with each other by placing the respective chambers would have been an

obvious matter of choice and personal taste. It is noted that applicant is obviously not the inventor of the food components and as taught by the prior art, food components are conventional, well known food materials packaged in combination. Therefore, for art recognized in applicant's intended function, for providing the consumer with a particular conventional food in combination would have been obvious to the ordinarily skilled artisan.

It is further noted that Bezek et al., Nedblake Jr. and Yu are not restricted to the particular food components but rather, are generic teachings. Again, one could choose any component as is desirable for the combination. In this regard, it is even further noted that Nedblake teach a combination such as soup and salad (Column 1, line 22) (which can be considered two non-beverage food products); Bezek et al. teach crackers or tortilla chips in combination with dips.

Regarding instant claims 2-3, Nedblake teaches a sandwich like product further comprising a bread-like portion and a filler material (See Figure 2) and wherein said filler material is in contact with said bread-like portion. Regarding instant claim 4, the combination food product of Nedblake is considered to have a shelf life of up to three years. This includes any period between 0 to three years.

Further regarding instant claim 9, Nedblake teaches separable compartments affixed together for dispensing, as shown in Figure 2. The second opening mechanism for breaching the sealed enclosure and providing access to the interior, such as a cap. Nevertheless, to use another conventional opening mechanism would have been obvious for the reasons discussed above. It is noted that Nedblake Jr. teaches that the

cap can take other configurations (Column 2, lines 1-2), thus providing further motivation for the use of other conventional opening means.

Regarding instant claim 11, the compartments of modified Nedblake are sized to contain disparate food products.

Instant claim 13 is rejected for the reasons discussed above with respect to instant claims 1, 9, 10 and 23. Regarding instant claims 17 and 24, Nedblake teaches wherein one of said disparate food products is a beverage.

**14. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4, 6, 8-11, 13, 16, 17, 23 and 24, above in paragraph 13 and in further view of Pinyot (US 6971521).**

Regarding instant claim 27, the prior art is taken as applied above. Furthermore, Nedblake teaches using heat shrink film to join two compartments into a unitary container (Column 2, lines 24-35).

Instant claim 27 differs from Nedblake in reciting wherein the compartment containing the beverage and the compartment containing the sandwich-like product are joined by threading.

Pinyot is relied on as a broad teaching of different means for forming a unitary container from two compartmentalized sections. As shown in figure 9, one means for securing a first disparate product to a second disparate product is a threading.

Therefore to substitute one conventional means for securing two sections of a unitary container together for another conventional means for performing the same function

would have been obvious since the art recognized using threading as a means for holding to compartments together.

**15. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4, 6, 8-11, 13, 16, 17, 23 and 24, above in paragraph 13 and in further view of Sanford (US 1830246).**

The references are taken as applied above. Nedblake is silent in teaching wherein the sandwich is further enclosed in a wrapper.

Sanford discloses using a wrapper (Figure 4, Item 5) to enclose a sandwich (Figure 4, Item 4 and Lines 45-53). Sanford is further similar to the prior art in that it teaches a first compartment containing the sandwich and a second compartment (Figure 3, Item 6) further containing a second disparate food item, such as a condiment or candy (See Lines 65-68). Thus, Sanford teaches that it has been conventional in the art to wrap a sandwich and then place the wrapped sandwich in a container for the purpose of ensuring its freshness. Therefore it would have been obvious to wrap the sandwich of Nedblake prior to placing in the container for the purpose of ensuring its freshness.

**16. Claims 1-4, 6,8, 9-11, 13, 16, 17 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinyot (US 6971521) in view of Nedblake Jr. (US 5664671), Bezek et al. and Yu.**

Regarding instant claims 1 and 10, Pinyot teaches a container sized and shaped for being dispensable from a vending machine (Column 1, lines 39-44), said container having a non-beverage food product enclosing portion, a top and a bottom conjointly formed with said non-beverage food product enclosing portion to provide a unitary sealed enclosure (See Figure 9 and Figure 10, Item 48; Column 5, lines 10-13). Pinyot further teaches an opening mechanism for breaching the sealed enclosure to provide access to the interior of said non-beverage food product (Column 5, lines 19-26).

The claim differs from Pinyot in reciting wherein a sandwich like product is contained within the sealed enclosure.

Nedblake Jr. is relied on to similarly teach combination package comprising a beverage and a compartment for a non-beverage food product, such as a sandwich (Figure 2). Nedblake Jr. thus teaches the conventionality of packaging a sandwich with a beverage and providing the combination in a convenient package that can be vended (Column 2, lines 47-53). Nedblake discloses that it was well established to include the sandwich-like product in one chamber with an associated product in another associated chamber.

Both Pinyot and Nedblake are similar in that they teach vendable containers comprising two chambers for disparate food products. Therefore to combine the associated product of Pinyot with a sandwich like product, as taught by Nedblake, would have been an obvious matter of choice depending on the desired combination to be vended from the unitary container.

Regarding instant claims 2-3, modified Pinyot teaches a sandwich like product further comprising a bread-like portion and a filler material (See Figure 2) and wherein said filler material is in contact with said bread-like portion. Regarding instant claim 4, the combination food product of modified Pinyot is considered to have a shelf life of up to three years. This includes any period between 0 to three years.

Regarding instant claim 6, modified Pinyot teaches that the vendable package contains a sandwich-like product and Pinyot further teaches wherein the second compartment can also contain a non-beverage food product, since both compartments can contain non-beverage food products (Column 5, lines 14-16).

Regarding instant claims 8 and 16, Pinyot teaches that the non-beverage food product can be crackers (Column 5, line 15).

Regarding instant claim 9 and 13, modified Pinyot teaches that each of the compartments contains a non-beverage food product, said compartments are affixed together, as shown in figure 10 and comprise opening mechanisms for breaching the sealed enclosure (Column 5, lines 19-26).

Regarding instant claim 11, Pinyot teaches wherein said vendable container is comprised of separated compartments each sized to contain a disparate food product (Figure 10). Regarding instant claim 17, Pinyot teaches wherein at least one of said disparate food products is a beverage (Figure 10).

As noted above in the rejection using Nedblake as the primary reference, regarding instant claims 6, 9, 10 which recite wherein the first and second products are disparate non-beverage food products, and instant claims 8 and 16 which recite a list of

food products as the at least one disparate food products, it is noted that the prior art of Nedblake, Bezek et al. and Yu teach providing a combination of food products. Once it was known to provide food components in different chambers and associate the chambers together, wherein said food components would be consumed together or during the same sitting, the particular conventional products one chooses to associate with each other by placing the respective chambers would have been an obvious matter of choice and personal taste. It is noted that applicant is obviously not the inventor of the food components and as taught by the prior art, food components are conventional, well known food materials packaged in combination. Therefore, for art recognized in applicant's intended function, for providing the consumer with a particular conventional food in combination would have been obvious to the ordinarily skilled artisan.

It is further noted that Bezek et al., Nedblake Jr. and Yu are not restricted to the particular food components but rather, are generic teachings. Again, one could choose any component as is desirable for the combination. In this regard, it is even further noted that Nedblake teach a combination such as soup and salad (Column 1, line 22) (which can be considered two non-beverage food products); Bezek et al. teach crackers and tortilla chips in combination with dips.

Regarding instant claim 27, modified Pinyot teaches using a threading to join two compartments, as shown in figure 9 of Pinyot to combine the two disparate food products.



**17. Claims 1-4,6,7-13 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezek et al. (US 6472007) in view of Nedblake Jr. (US 5664671) and Yu (US 5279841) and Kafentzis et al. (US 6756068).**

Regarding claims 1 and 10, Bezek et al. teach a container sized and shaped for being dispensable from a vending machine (Column 3, lines 47-53) having a food product enclosing portion (See Inside of Figure 1a), a top and a bottom to form a unitary sealed enclosure and an opening mechanism for breaching the sealed enclosure to provide access to the interior of said non-beverage food product enclosing portion (Figure 9b, Items 920 and 925).

The claims differ from Bezek et al. in reciting wherein at least one of said two disparate food products is a sandwich-like product.

Nedblake discloses that it was well established to include two disparate food products in a sandwich-like combination in one chamber, as shown in Figure 2. Since Bezek et al. already teach a unitary container comprising a food product enclosing portion and further comprising food products. To include a sandwich like product would have been obvious, since Nedblake teaches that it has been well established to include sandwich products in chambers of vendable products.

Regarding instant claim 2, Bezek et al. modified by Nedblake teaches that the sandwich-like product comprises a bread-like portion and a filler material.

Regarding instant claim 3, modified Bezek et al. teach the filler material in contact with the bread-like portion. Regarding instant claim 4, the combination food product of modified Bezek et al. is considered to have a shelf life of up to three years.

This includes any period between 0 to three years. Regarding instant claim 6, Bezek et al. teach dividing the container into two compartments, as shown in figure 9b. Modified Bezek et al. teach a sandwich being contained in one compartment and Bezek et al. further teach a second non-beverage food product in the second compartment, such as dip or chips (Column 3, lines 34-36 and Column 7 line 66 to Column 8, line 1).

Regarding instant claim 11, the vendable container of modified Bezek et al. is sized to contain a disparate food product. Regarding instant claim 12, the peelable portions (as shown in Figure 9b) are movable partition members in the single food product enclosing. Regarding instant claim 13, modified Bezek et al. teach separable compartments each having a top bottom and food product enclosing portion and an opening mechanism for breaching the sealed enclosure to provide access to the interior.

As noted above in the rejection using Nedblake as the primary reference, regarding instant claims 6, 9, 10 which recite wherein the first and second products are disparate non-beverage food products, instant claims 8 and 16 which recite a list of food products as the at least one disparate food products and instant claim 17 wherein one of said disparate food products is a beverage, it is noted that the prior art of Nedblake, Bezek et al. and Yu teach providing a combination of food products. Once it was known to provide food components in different chambers and associate the chambers together, wherein said food components would be consumed together or during the same sitting, the particular conventional products one chooses to associate with each other by placing the respective chambers would have been an obvious matter of choice and

personal taste. It is noted that applicant is obviously not the inventor of the food components and as taught by the prior art, food components are conventional, well known food materials packaged in combination. Therefore, for art recognized in applicant's intended function, for providing the consumer with a particular conventional food in combination would have been obvious to the ordinarily skilled artisan.

It is further noted that Bezek et al., Nedblake Jr. and Yu are not restricted to the particular food components but rather, are generic teachings. Again, one could choose any component as is desirable for the combination. In this regard, it is even further noted that Nedblake teach a combination such as soup and salad (Column 1, line 22) (which can be considered two non-beverage food products); Bezek et al. teach crackers and tortilla chips in combination with dips. Kafentzis et al. is also cited for the conventionality of bread-like products in combination with another non-beverage product such as a sauce in a compartmentalized container (Figure 4 and column 3, lines 46-59).

**18. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied above in paragraph 17, to claims 1-4,6,7-13 and 16-17, and in further view of Sanford (US 1830246).**

Bezok et al., modified by Nedblake teach a sandwich like product within one of the chambers of the container. The combination is silent in teaching wrapping the sandwich prior to placing in the container. Nevertheless, Sanford and the reasons for rejection is taken as applied above in 15.

**19. Claims 23 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman (US 5924596) in view of Kirkland (US 6006945).**

Regarding claims 23, 25 and 26, Kaufman discloses a container (Figure 2, item 42) comprising two non-comestible products, such as a t-shirt and money (Figure 2, item 46). The container is to be dispensed in a vending machine that also vends food products such as soda (Figure 1 and Column 2, lines 51-55). Kaufman is silent in teaching an opening mechanism accessing the interior of the product enclosing portion. However, Kirkland teaches the conventionality of an opening mechanism, such as a pulling strip (Column 4, lines 42-48) for the purpose of facilitating opening of the package, which can be made of plastic (Column 5, lines 9-11). Therefore, to include an opening mechanism in the package of Kaufman, such as a pulling strip, would have been obvious for the purpose of facilitating removal of the contents therein.

**20. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howes et al. (US 5056659).**

The rejection is taken as cited in paragraph 17 of the previous Office Action, mailed November 15, 2006.

***Response to Arguments***

21. Applicant's arguments with respect to Sanford reference, on pages 12 and 13 of the response have been considered but are not persuasive. As discussed in the rejection above, Sanford teaches an outer packaging (1) and an inner wrapping (5) wherein said inner wrapping, wraps said sandwich (4). It can be seen in Figure 3, that the inner wrapping (5) completely wraps the sandwich (4). Applicant states that the wrapper is the container, but as indicated, Sanford teaches a wrapping as well as a container.

22. Applicants arguments with respect to Howes et al. on page 12 of the response have been considered but are not persuasive. The locking mechanism that applicant argues prevents the prize from being readily accessible would have been no different than a means of tamper evidence, which prevents inadvertent opening of the prize bearing container (See Column 2, lines 42-47). Furthermore, in light of the rejection above under 112, first and second paragraph, it is noted that by using the pull-tab, Howes et al. teach a mechanism for readily accessing the interior of said product enclosing portion. It is further noted that applicant's arguments are not commensurate in scope with the claims. The claims recite an opening mechanism for readily accessing the interior of the product enclosing portion. The pull-tab of Howes et al. provides access to the interior of the container.

23. With regard to applicant's argument that Howes et al. teach a prize notification device, it is noted that Howes et al. also teach including a prize within the container (Column 4, line 62), for instance, which is considered a consumer product.

24. It is noted that applicant has added the limitation "unitarily" to instant claims 1, 9, 10 and 13. It is noted however, that applicant has not defined the term unitarily. Unitarily is interpreted based on the cited definitions: (1) of or relating to a unit; (2) having the nature of a unit; (3) based on or characterized by one or more units.

### ***Conclusion***

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Art Unit: 1794

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